THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION Nos.18577 of 1994 and 34795 of 1997

DATED:23-02-2006

WP.No.18577 of 1994

Between:

P.Appa Rao and others . . .Petitioners

And

The District Judge and Estate Abolition

Tribunal, Visakhapatnam, and others . . .Respondents

WP.No.34795 of 1997

Between:

K.Venkata Raju . . .Petitioner

And

The District Judge and Estate Abolition

Tribunal, Visakhapatnam, and others . . .Respondents

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION Nos.18577 of 1994 and 34795 of 1997

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O R D E R:

In view of the fact that the issue involved in both the writ petitions is one and the same, they are heard together and being disposed of by this common order.

In both these writ petitions, the petitioners obtained a rule from this Court calling upon the respondents to show cause as to why a Writ in the nature of Certiorari shall not be issued under Article 226 of the Constitution of India for calling up the records from the Court of the District Judge and Chairman, Estate Abolition Tribunal, Visakhapatnam, in Tribunal Appeal No.8 of 1986 along with the judgment, dated 15-07-1994, and to quash the same.

The factual backdrop of the case relevant for the purpose of the present proceedings may be stayed thus:

Pediredla Appa Rao in WP.No.18577 of 1994 claiming to be a lawful ryot of Acs.6.58 cents of land out of the total extent of Acs.7.15 cents of land in Survey No.198/1 of Sanyasiraju Agaraharam, clubbed in Ananthapadmanabhapuram Village, which was taken over under the provisions of the Estate Abolition Act, 1948, (for short "the Act") filed the writ petition stating that the said Agaraharam was surveyed in Ananthapadmanabhapuram Village and it was owned by several persons. Mr. N.Suryaprakasa Rao is one among them. In 1944, the said person inducted the petitioner's father Kittanna into possession of the schedule land. During his father's lifetime and also after his death, the petitioner is paying land revenue to the landholder and has been in continuous possession and enjoyment of the land. A

Cowl patta was also granted in favour of his father by the landholder. While so, the father of the fourth respondent, who is the petitioner in WP.No.34795 of 1997, filed O.S.No.317 of 1981 on the file of the Court of the District Munsif, Narsipatnam, claiming the schedule land belonging to him and that he was granted a settlement patta. The petitioner came to know that the fourth respondent obtained the settlement patta erroneously. As Kudivaram rights of the schedule land vest with the petitioner's father, the fourth respondent cannot claim patta under Section 15(1) of the Act. Therefore, the petitioner filed a claim petition in S.R.No. 56(1)1/83 VSP under Section 56(1)(c) of the Act before the Settlement Officer, Visakhapatnam, to declare him as a lawful ryot for the extent of Acs.6-58 cents of land out of the total extent of Acs.7-15 cents of land in Survey No.198/1 of the above mentioned Village.

Fourth respondent herein filed a counter before the Settlement Officer denying the allegations stating that his predecessors-in-title of the landholders were in personal cultivation of the land at the relevant time and that Mr.N.Suryaprakasa Rao inducted the petitioner's father into possession of the land is incorrect and petitioner's father is nothing to do with the land and was never in possession of the same. It is stated that by the time of the notified date 07-01-1959, the land was in possession of his father Jagannadha Rao. The Settlement Authorities after an elaborate enquiry, granted a patta to him as a landholder. The claim of the petitioner under Section 11(a) of the Act was dismissed by the Director of Settlements. The claim is barred by resjudicata and also by limitation and that the petitioner is estopped from claiming patta as his claim was earlier dismissed.

The third respondent, Settlement Officer, by order, dated 27-05-1986, declared the petitioner as a lawful ryot of the petition schedule land. Aggrieved by the same, the fourth respondent filed T.A.No.8 of 1986 before the District Judge and Chairman, Estate Abolition Tribunal, Visakhapatnam. In the said appeal, the fourth respondent filed I.A.No.250 of 1990 to receive the sale deed, dated 14-05-1968, I.A.No.1102 of 1990 to receive the Field Measurement Book sketch and I.A.No.937 of 1991 to receive certified copies of various pleadings filed in O.S.No.317 of 1981 on the file of the Court of the District Munsif, Narsipatnam, some cist receipts, some orders and notices issued by the Survey Officer, as additional evidence.

The learned District Judge after elaborately considering the rival claims, observed that the fourth respondent has not pleaded in his counter that he has been

cultivating the disputed land as a private land for a continuous period of 12 years immediately before the 1st day of July 1908, retaining Kudivaram ever since, and therefore, he cannot claim any right under Section 3(1)(b)(ii) of the Act. The fourth respondent is claiming ryotwari patta in respect of the disputed land on the ground that the schedule land is a private land as defined under Section 3(10)(b)(iii) of the Act and it is in his possession. Unless he satisfied the test of private land, he is not entitled to ryotwari patta as held by this Court in **V.LAKSHMINARASIMHAM v. M.SUBBAIAH**. He is claiming the right only under Ex.R.1, which is the order passed in S.R.No.15(1)/302/NPM, dated 20-04-1962, by the Assistant Settlement Officer, Anakapalle. The said order was purported to have been passed in *suo motu* enquiry proposed by the Field Staff under Section 13 read with Section 15(1) of the Act. The learned Judge further observed that the said finding recorded by the Assistant Settlement Officer is not binding and is not final. Ex.R.1 is not based on any evidence, and thereby, the learned Judge opined that the evidence adduced by the fourth respondent is inadequate to prove that the land in dispute is a private land on the ground that the fourth respondent and his predecessors in interest have been in possession of the same for a period of
12 years continuously prior to 01-11-1993 as required under Section 3(10)(b)(iii) of the Estates Land Act and accordingly, held that the fourth respondent failed to prove his right for grant of ryotwari patta in respect of the land in question.

Coming to the claim of the petitioner, the Tribunal held that the petitioner, who mainly based his claim on Ex.P.1-Cowlnama executed by Mr. N.Suryaprakash Rao in favour of his father, admitted that he has no personal knowledge about the execution of Ex.P.1 and that he was a minor at that time. Ex.P.1 appears to be a suspicious document. There is not a shred of circumstantial and contemporaneous evidence, which may even remotely to support the version that Mr. N.Suryaprakash Rao executed any document or gave the land on Cowl to the father of the petitioner. Significantly, Mr. N.Suryaprakash Rao, who was alive during the course of trial, was not examined and not a single person from the Village has been examined to show that
Mr. N.Suryaprakash Rao was in any way associated with any land in the Village and accordingly, allowed the appeal filed by the fourth respondent with the finding that neither the petitioner nor the fourth respondent can be declared as a lawful ryot under Section 56(1)(c) of the Act. Questioning the same, both these writ petitions

were filed.

Sri N.V.Ranganadham, learned Senior counsel for the petitioner in W.P.No.34795 of 1997, who is the 4th respondent in WP.No.18577 of 1994, contends that the order of the Settlement Officer granting ryotwari patta under Section 15(1) of the Act is final and binding on all persons and therefore, it is not liable to be questioned. He also contends that when once the landholder is granted ryotwari patta, Section 11(a) of the Act is not applicable. In fact, ryotwari patta was granted to the father of the petitioner under Section 13(b) of the Act. He also contends that once the claim of the petitioner in WP.No.18577 of 1994 under Section 11(a) of the Act was dismissed by the Director of Settlements, the question of claiming ryotwari patta by him for the same land under Section 56(1)(c) of the Act does not arise. He further contends that the patta granted under Section 15(1) of the Act can be questioned only in an appeal before the District Judge under Section 15(2) of the Act and not through any other means. Therefore, the orders passed by the Settlement Officer as well as the District Judge are without jurisdiction and are liable to be set aside.

Per contra, the learned counsel for the petitioner in WP.No.18577 of 1994 contends that once the Settlement Officer held that the fourth respondent cannot claim any patta and that on the relevant date, the petitioner's father was in possession of the property under the Cowlnama, Ex.P.1, he is entitled to a patta as a lawful ryot and therefore, the Tribunal erred in coming to the conclusion that neither the petitioner nor the fourth respondent can be declared as a lawful ryot under Section 56 (i)(c) of the Act.

Learned Government Pleader for Revenue contends that the petitioner in WP.No.18577 of 1994 filed the claim petition under Section 11 of the Act for grant of ryotwari patta, but the Director of Settlements rejected it. Without disclosing the said fact, the petitioner filed a petition under Section 56 (1)(c) (2) of the Act before the Settlement Officer. As he suppressed the material fact, he is not entitled to any relief. He further contends that the Settlement Officer through his order, dated 27-05-1986, declared the petitioner as a lawful ryot. Against the said orders, no appeal has been filed and therefore, the said orders became final. The same has not been properly considered by the Settlement Officer. Therefore, the entire matter may be remitted to the Settlement Officer for conducting an enquiry into the rival claims.

Except the above submissions, learned counsel neither placed any reliance on the

decided cases on this aspect, nor assisted the Court in coming to a right conclusion.

It is advantageous to have an insight into the provisions of Section 56 of the Act, which reads as under:

56. Decision of certain disputes arising after an estate is notified:-

1. Where after an estate is notified, a dispute arises as to

   a. whether any rent due from a ryot for any fasli year is in arrear or

   b. what amount of rent is in arrear or

   c. who the lawful ryot in respect of any holding is, the dispute shall be decided by the Settlement Officer.

2. Any person deeming himself aggrieved by any decision of the Settlement Officer under sub-section (1) may, within two months from the date of the decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal; and its decision shall be final and not be liable to be questioned in any Court of Law.

It is astonishing to note that there are authoritative pronouncements on this issue by a Larger Bench in **T.MUNUSWAMI NAIDU v. R.VENKATA REDDI**, which is not even brought to the notice of this Court by either of the counsel.

In **CHERUKURU MUTHAYYA v. GADE GOPALA KRISHNAYYA**, Mr. Gopal Rao Ekbote, Chief Justice, considered the question as to whether an application under Section 56(1)(c) of the Act can lie as was filed in the present case for getting a decision as to who is the lawful ryot, and held that Section 56(1)(c) of the Act is not an independent provision nor it is a substantive provision and it does not postulate any independent inquiry. Therefore, the purpose of Section 56 of the Act makes it clear that an enquiry into a question covered by Clause (c) is intimately and integrally connected with Sections 55 and 56 only.

A Division Bench of this Court doubted the correctness of the above view. As it, in fact, requires reconsideration with regard to the operation of Section 56(1) of the Abolition Act, the matter was referred to a Larger Bench. Accordingly, the Larger Bench of this Court in T. Munuswami Naidu's case (2 supra) after elaborately

considering the provisions of the Act and the decided cases, both by the Madras High Court as well as this Court, held as follows:

> "Section 11 deals with lands in which ryots are entitled to ryotwari pattas, while Sections 12 to 14 deal with the rights of the landholders to get similar pattas. Section 11 proclaims that every ryot is entitled to a ryotwari patta in respect of ryoti lands, which immediately before the notified date were properly included or ought to have been properly included in his holding. He is also entitled to ryotwari patta in respect of lanka lands in his occupation immediately before the notified date, such lands having been in his occupation or in that of his predecessors-in-title continuously from the 1st day of July, 1939. However, no person, who has been admitted into possession of any land by the landholder after the 1st day of July, 1945, is entitled to a ryotwari patta in respect of such land, except where the Government so direct. Likewise, Sections 12 to 14 enumerate that lands in zamindari, inam and under-tenure estates respectively in respect of which land holders are entitled to ryotwari pattas.
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> A reading of Sections 11 to 14 in the light of Section 5 read with the proviso to Section 3(d), it is abundantly clear that it is the Settlement Officer that will have to decide as to who is entitled to ryotwari patta under Sections 11 to 14 be he a ryot or a landholder.
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> If more than one person apply for a ryotwari patta under Section 11, that Section does not contain a provision as to by whom, how and in what manner it should be decided as to who the lawful ryot is to whom ryotwari patta can be granted. In the case of landholders, however, Section 15 provides for determination of lands in which a landholder is entitled to a ryotwari patta, and the Settlement Officer is enjoined to examine the nature and history of all lands in respect of which the landholder claims a ryotwari patta under Sections 12, 13 or 14, as the case may be, and decide in respect of which lands the claim should be allowed. The said decision is appealable to the Tribunal, whose decision is final and is not liable to be questioned in any Court of law.
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> In the case of ryots seeking ryotwari patta where there is a dispute as to who the lawful ryot is in respect of any land or holding, we will have to seek elsewhere in the Abolition Act for the power of the Settlement Officer to decide as to who the lawful ryot is.
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> Accordingly, this Court held that clause (c) of Section 56(1) is the provision under which disputes as to who the lawful ryot is in respect of any holding which arises in respect of granting of pattas under Section 11 are to be settled by the Settlement Officers.
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> We also draw support to the construction we have placed on

> Section 56(1)(c) from an analogous provision contained in Sections 63 and 63-A. Section 63 provides for a decision of questions regarding forests. If any question arises whether any land in an estate is a forest or is situated in a forest, it will have to be determined by the Settlement Officer. That determination is subject to an appeal to the Director and also to a revision by the Board of Revenue. Section 63-A gives an overriding effect to the decision of these authorities and declares that the said decision shall be final and binding on all authorities and parties in relation to the claim for grant of a ryotwari patta in respect of any land under Section 11 or Section 15.
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> After noting the same it was held in paragraph 37 that the enquiry postulated under Section 56(1)(c) is not limited merely to situations arising under clauses (a) and (b) of Section 56(1) and that under Clause (c), the Settlement Officer is empowered to decide the question, who the lawful ryot is in respect of any holding in whatever context that dispute arises under the Abolition Act".

It is summarized in paragraph 16 as under:

> "In regard to under-tenure estates, under Section 10 the Settlement Officer is once again given the power to decide as to whether an estate was created before or after the date on which the principal estate was permanently settled. Any person aggrieved by the decision of the Settlement Officer may prefer an appeal to the Tribunal. After Section 10, there are seven sections, which relate to grant of ryotwari pattas. In fact, they occur under the heading "Grant of ryotwari pattas."

It is not in dispute that the fourth respondent laid much emphasis on the orders, Ex.R.1, dated 20-04-1962, passed by the Settlement Officer under Section 13(b)(iii) of the Act. The said orders became final, since no appeal is preferred under Section 15(2) of the Act. To the said proceedings, the petitioner is not a party. On rejection of petitioner's claim to declare him as a lawful ryot, he invoked the jurisdiction of the Settlement Officer, who is competent to decide the matter under Section 56(1)(c) of the Act.

The Tribunal in paragraph 15 of the impugned judgment clearly observed that an order was passed either under Section 11 in *suo motu* enquiry granting ryotwari patta in favour of a ryot or under Section 13 read with Section 15 of the Act in favour of the landholder granting ryotwari patta in his favour do not bar the proceedings

under Section 56(1)(c) of the Act and that the earlier order does not operate as resjudicata, as per the law declared by this Court in **M.VENKATARATNAM v. M.RAMADAS**, **K.RAMAMURTY v. A.NAGAMMA** and **N.V.RAMANAMMA v. SETTLEMENT OFFICER, VISAKHAPATNAM,** whereunder it was held that if an earlier decision has been given by the Settlement Officer in regard to the entitlement of ryotwari patta declaring as a lawful ryot, his entitlement can also be considered under Section 56(1)(c) of the Act.

The Tribunal rightly recorded a finding that that the fourth respondent is not entitled to grant a ryotwari patta as per the Act as he is not in possession of the property and as he has not produced any evidence to show that the suit land is a private land cultivated by him for a continuous period of 12 years immediately preceding 1st day of July, 1908, provided that the land holder has retained the Kudivaram eversince and has not converted the land into ryoti land as contemplated under Section 13(a)(i) of the Act. Similarly, the Tribunal rightly held that the petitioner also failed to establish that he has cultivated the land from 1st day of July, 1945 and has been in continuous possession of the same from the said date as contemplated under Section 13(b) (iii) of the Estate Abolition Act. Accordingly, the appeal was allowed.

The Tribunal analyzed the evidence of the fourth respondent who was examined himself as R.W.1, who admitted in his cross examination that all Village Karanams are related to him, and examined one Village Karanam as R.W.2. In the absence of any independent evidence on which Assistant Settlement Officer can be seem to have acted upon, and in the absence of any reference of Ex.R-1 to any cultivation record supporting the case of the landlord (R-4) that he has been in possession of the land from 1-7-1945, Ex.R-1 is not based on any evidence and cannot be pressed into service as substantive piece of evidence either to show that the land in question is a private land of the landholder by virtue of his personal cultivation of the landlord for a continuous period of 12 years prior to 1-11-1933 or otherwise satisfying the requirements of the definition of "private land". Further in Ex.R-4, a copy of the notice issued during suo motu enquiry under Section 15 (1) of the Act, S.No.198/1 is mentioning as among those in respect of which ryotwari patta was proposed to be issued which shows the name of Kurucheti Simhadri Rao, but not the respondent's father's name and the said notice also does not support his case. R.W. 2 who is the maternal grand-father of R.W.1 is an interested witness in

helping R.W.1. There is no other independent evidence produced by the fourth respondent to prove that the land is a private land. Further the plea of the petitioner that the inam was owned by the landlord including one Nadiminti Surya Prakash Rao, who inducted the petitioner's father Pediredla Kittanna Patrudu into possession of the land in or about 1944. Ex.P-1 Cowl Patta in favour of the petitioner's father has been filed to establish the said fact. But P.W.1 admitted that he has no personal knowledge about execution of Ex.P-1, and Surya Prakash Rao who was alive as per P.W2 was not examined by the petitioner who admitted that he died four months prior to his deposition. Not a single person from the village has been examined to show that Nadiminti Surya Prakasha Rao was in any way associated with any land in the village Sanyasiraju Agraharam. Whereas P.Ws.2 and 3 stated that they have not seen Nadiminti Suryaprakash Rao and they do not know him. Ex.P.1 was not seen the light of the day till it was produced before the Settlement Officer subsequent to filing of petition and there is no mention about the said document in the petition filed claiming ryotwari patta. Exs.P-2 and P-3 are cist receipts, under which cist said to have been paid by Suryaprakash Rao for the years 1945 and 1948 respectively. Exs.P-4 and P5, which are cist receipts are of the years 1950 and 1962 respectively. The petitioner or the fourth respondent failed to produce cultivation account and adangal to substantiate that they were in possession of the property. The said findings arrived at by the court below are after critically analyzing the oral and documentary evidence, which do not suffer from any perversity or infirmity.

It is well settled that High Court cannot sit as a court of appeal over the findings recorded by a competent inferior tribunal to nor it is permissible to re-appreciate the evidence for itself or can correct an error of fact (unless it affects jurisdiction), however apparent it might be.

Neither the petitioner nor the respondents have produced any other evidence to substantiate their possession as required under the Act for conferring ryotwari patta on them.

Thus, on a careful consideration of the entire facts of the instant case before me and the provisions of the Act, this court is of the opinion that no infirmity can be pointed out to the finding of fact arrived at by the learned Appellate Judge that the

petitioner in W.P.No.18577 of 1994 is not entitled to patta, equally, the petitioner in WP.No.34795 of 1997 also failed to establish that he is a lawful ryot for granting patta.

The Feeble submission of the learned Senior Counsel that the appeal is confined only to the extent of declaration granted in favour of the petitioner, therefore tribunal was not justified in declaring that the fourth respondent is not entitled to grant ryotwari pattas as landlord and the same need not be gone into appears to be a fallacy. It has been categorically held by the Larger Bench that ryots seeking ryotwari patta where there is a dispute as to who the lawful ryot is in respect of any land or holding, it is always open for the Settlement Officer to decide as to who the lawful ryot is, in respect of any holding in whatsoever context dispute arises under the Act. Further this Court in **M.VENKATARATNAM v. M.RAMADAS; K.RAMAMURTY v. A.NAGAMMA** and **N.V.RAMANAMMA v. SETTLEMENT OFFICER, VISAKHAPATNAM** (4.5.6 supra) categorically held that if an early decision has been given by the Settlement Officer with regard to entitlement of ryotwari patta declaring as lawful ryot,, his entitlement can also be considered under Section 56(1)(c) of the Act and that the earlier order, if any, passed does not operate as *res judicata.*

It is well settled that powers of the appellate court is co-terminus with that of the original authority and it is always open for the appellate tribunal to pass such orders in exercise of its appellate power when the Settlement Officer while granting patta can go into the correctness of earlier declaration and in fact the Settlement Officer declared that the petitioner is entitled to ryotwari patta dehors its earlier declaration, on the appeal filed by the fourth respondent, it was always open for the Tribunal to consider the rival claims of both parties and pass appropriate orders thereon.

For the aforementioned reasons, no incurable infirmity is discernible to the finding of fact arrived at by the Tribunal. Hence, both the writ petitions are liable to be dismissed and they are accordingly dismissed with no order as to costs.

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(A.GOPAL REDDY, J)

23rd FEBRUARY, 2006.

Kvni/kmr/Murthy